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Rocform Corp. and its alter ego/successor/single employer Ammar Corp. and Detroit Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 7-CA-31646

November 27, 1998

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

On August 28, 1991, the National Labor Relations Board issued a Decision and Order¹ ordering Rocform Corp., inter alia, to make certain contractually required payments to certain benefit funds and to remit to Detroit Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, with interest, dues deducted from the pay of unit employees.

On May 18, 1992, the Board issued a Supplemental Order² approving a Stipulation Consenting to Amount of Pension Contribution, Schedule for Payment and Entry of a Supplemental Board Order and Consent Judgment, which had been agreed to by the Respondent Rocform, the Charging Party, and the Counsel for the General Counsel on April 16, 1992.

On September 8, 1992, the United States Court of Appeals for the Sixth Circuit entered its Consent Judgment as mandate in Case No. 92-5939, enforcing the provisions of the Board's Supplemental Order issued May 18, 1992.

On May 27, 1998, the Acting Regional Director for the Seventh Region, issued and served upon Respondents herein, by certified mail, a compliance specification and notice of hearing, and a copy of the Board's Rules and Regulations, Section 102.56, answer to compliance specification.

The compliance specification alleges, inter alia, that, as set forth in the parties' stipulation, \$12,775.69 was owed to the pension fund designated in the Charging Party Union's various collective-bargaining agreements and \$1,697.90 was owed to the Charging Party Union in dues moneys that were deducted from the pay of Respondent Rocform employees, but were not remitted to the Charging Party Union.³ No out-of-pocket expenses were claimed by the employees. Thus, the total due was \$14,473.59. Payments of \$10,372.42 have been made toward satisfaction of the Board's Order, as enforced, leaving a balance of \$4,101.17. Thus, the obligation will be discharged by payment of \$4,101.17, plus interest.

¹ 304 NLRB No. 51 (not included in bound volumes).

² Not included in bound volumes.

³ Due to a typographical error the compliance specification states that, \$12,775.60 was owed to the Charging Party Union's pension fund.

The compliance specification also alleges that, about June 1993, Joseph M. Bonadeo caused Respondent Ammar to take over and continue to operate the business of Respondent Rocform in essentially unchanged form and as a disguised continuance of the Respondent Rocform. The compliance specification also alleges, inter alia, that Respondent Rocform and Respondent Ammar are alter egos and a single employer and are liable, jointly and severally, to remedy the unfair labor practices of Respondent Rocform. The compliance specification further alleges, in the alternative, that Respondent Ammar continued as the employing entity with notice of the potential liability of Respondent Rocform to remedy its unfair labor practices and is a successor to Respondent Rocform.

On June 17, 1998, Joseph Bonadeo, who is alleged to be an officer and vice president of Respondent Rocform, and majority owner of Respondent Ammar, sent a letter, with attachments, to the Acting Regional Director of the Seventh Region, in response to the compliance specification and notice of hearing, stating that he denied that additional moneys are owed to the Union. Bonadeo further stated that in 1995 his "attorney reached a settlement with the attorneys for the Union for fringe benefits."

On August 11, 1998, the Acting General Counsel filed with the Board a Motion to Transfer Case to the Board and for Summary Judgment, with exhibits attached. The Acting General Counsel argues in his motion that the Respondents have not filed a specific and adequate answer as required by Section 102.56(b) of the Board Rules and Regulations, and that the basis of Respondents' denial is without merit.

On August 13, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show cause why the motion should not be granted. The Respondents did not file a response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(b) and (c) of the Board Rules and Regulations states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general

denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.* . . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

In the letter Bonadeo sent in response to the compliance specification he denied "that additional monies are owed to Detroit Millmen's Local 1452." Bonadeo contended that in 1995 his attorney reached a settlement with the attorneys for the Union, with respect to fringe benefits.

In his motion, the Acting General Counsel notes that the United States District Court, Eastern District of Michigan, Southern Division, on May 12, 1994, filed an Order Granting Plaintiffs' Motion For Default Judgment in *Trustees of the Carpenters' Pension Funds, et al. v. Rocform Corporation*, U.S. District Court No. 94-CV-70017-DT. The Acting General Counsel contends that that Order clearly preserves the right of the plaintiffs in that case to pursue further action should the Board cease its collection efforts and is clearly indicative of the parties' intent to exclude the portion of the remedy associated with the Board's Supplemental Order from their agreement regarding the Trustees' district court action.

The Acting General Counsel included in his exhibits a copy of the district court's Order Granting Plaintiffs Motion For Default Judgment. The Order states that "the plaintiffs are awarded whatever amounts such audit⁴ reveals as owed by defendant to plaintiff, plus \$5,893.26, the amount due and owing to plaintiffs Trustees by defendant *which is not included in the Supplemental Order of the National Labor Relations Board of May 18, 1992*, plus costs, interest, and attorneys' fees. . . ." [Emphasis added.] Also, the Order states "that plaintiffs reserve the right to seek Judgment for the remaining amounts due by defendant to plaintiffs *which are included in the Supple-*

mental Order of the National Labor Relations Board of May 18, 1992, if the collection efforts with respect to that Order are discontinued by the Board." [Emphasis added.]

There were four attachments to Bonadeo's letter in response to the compliance specification. These attachments include letters in which the attorneys for the parties, in regard to *Carpenters' Pension Trust Funds, et al. v. Rocform Corporation*, Case 94-CV-70017 DT, discussed terms of a settlement of that case and a copy of a check in the amount of \$7,500 representing full and final settlement of that matter. The final attachment is a document entitled Satisfaction of Judgment, filed in the District Court, regarding Case 94-CV-70017-DT, on May 23, 1995, by the attorneys for the Trustees of the Carpenters' Pension Funds stating that "the judgment entered by this Court on May 12, 1994 has been satisfied in full."

In answer to the compliance specification, the Respondents' sole contention is that the obligations of Respondent Rocform under the Board's May 18, 1992 Order were included in the settlement of the district court Case 94-CV-70017-DT and therefore nothing further is owed to the Union or the benefit funds under the Board's Order. We reject the Respondents' contention. We agree with the Acting General Counsel that the Order of the District Court, Eastern District of Michigan, Southern Division, dated May 12, 1994, explicitly excluded moneys due under the Board Supplemental Order dated May 18, 1992. Thus, the settlement, of the district court order dated May 12, 1994, and the statement in the Satisfaction of Judgment which was filed on May 23, 1995, that "the judgment entered by this Court on May 12, 1994 has been satisfied in full", also excluded moneys due under the Board's Order.

Other than as set forth above, the Respondents' answer fails to respond to the allegations of the compliance specification. Therefore, we agree with the General Counsel that the Respondents' answer is substantively deficient. It does not comply with the requirements of Section 102.56 (b) or (c). Accordingly, we shall grant the General Counsel's motion.

The following allegations of the compliance specification stand uncontroverted.

At all material times, Inez Bonadeo and Betty Arrighini have been sisters, owners, and principal stockholders of Respondent Rocform. At all material times, Joseph M. Bonadeo, the son of Inez Bonadeo, has been an officer of Respondent Rocform and has held the position of vice president.

Respondent Ammar was incorporated on June 2, 1993. From June 2, 1993, to the present, Joseph M. Bonadeo has been the majority owner of Respondent Ammar. About June 1993, on a date particularly within the knowledge of Respondent Rocform and Respondent Ammar, Joseph M. Bonadeo caused Respondent Ammar to take over and continue to operate the business of Re-

⁴ The defendant, in that case, was ordered to submit to the plaintiffs books and records needed by the plaintiffs to determine the amount the defendant owed for the period from February 17, 1993 to the date of the production of those books.

spondent Rocform in essentially unchanged form and as a disguised continuance of Respondent Rocform.

At all material times, Respondent Rocform and Respondent Ammar have been business enterprises having family ownership, common officers, common management and supervision, common business purpose, operation, customers and supplies, common premises, facilities and equipment, interchange of personnel, common labor relations policies, and have variously held themselves out to the public as a single enterprise.

Based on the conduct described above, Respondent Rocform and Respondent Ammar are alter egos and/or a single employer within the meaning of the Act and are liable, jointly and severally, to remedy the unfair labor practices of Respondent Rocform. In the alternative, based on the conduct and operations described above, Respondent Ammar continued as the employing entity with notice of the potential liability of Respondent Rocform to remedy its unfair labor practices and is a successor to Respondent Rocform.⁵

As noted, we grant the General Counsel's Motion for Summary Judgment. Accordingly, the amounts due the benefit funds and the Charging Party Union are as stated in the Consent Judgment, minus payments of \$10,372.42. Pursuant to paragraph (d) of the Consent Judgment, we will order payment by the Respondents of all amounts remaining unpaid under the Consent Judgment, with additional interest due on the entire unpaid balance from the date of default until full payment is received, computed in accordance with the formula set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).⁶

⁵ In *Rocform Corp.*, 304 NLRB No. 51 (1991), the Board found that Respondent Rocform is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. Since we have found, *inter alia*, that the Respondents Ammar Corp. and Rocform Corp. are alter egos and/or a single employer, we conclude that the Respondent Ammar Corp. is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. See, *Il Progresso Italo Americano Publishing Co.*, 299 NLRB 270 (1990); *IMCO/ International Measurement Co.*, 304 NLRB 738, 741 (1991), *enfd. sub nom. NLRB v. International Measurement Co.*, 978 F.2d 334 (7th Cir. 1992).

⁶ Member Hurtgen agrees with his colleagues that the motion for summary judgment should be granted. More specifically, he agrees that it appears to be the case that the district court action does not involve the same liability as does the instant NLRB action. However, the reason for this difference is not clear (e.g. perhaps, the liability in the two cases is focused on wholly different time periods). Similarly, it appears that the settlement involved only the district court liability and not the instant case liability. However, this matter is also not free from doubt. For this reason, and in order to ensure that there is no double recovery, Member Hurtgen would permit Respondent to demonstrate to the Board's compliance officer that its payments in the district court action, and/or in the settlement, cover all or part of the liability in the instant case. If there is such a showing, the parties can agree to adjust this case for an amount less than that provided herein. If they are unable to agree, the matter can be resubmitted to the Board, with a more complete evidentiary record.

ORDER

The National Labor Relations Board orders that the Respondents, Rocform Corp. and Ammar Corp., Southfield Michigan, their officers, agents, successors, and assigns, shall pursuant to paragraph (d) of the Consent Judgment in *NLRB v. Rocform Corp.*, 92-5939, (6th Cir. Sept. 8, 1992), pay \$4,101.17, which is the total of all amounts remaining unpaid under the Consent Judgment, with additional interest due on the entire unpaid balance from the date of default until full payment is received, computed in accordance with the formula set forth in *New Horizons for the Retarded*, *supra*.

Dated, Washington, D.C. November 27, 1998

Sarah M. Fox,	Member
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Peter J. Hurtgen,	Member
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J. Robert Brame III,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD